

1. Partitioning

CelSMer agrees with AMTA that a 900 MHz MTA licensee should be able to partition its license to qualified entities at any time after receiving its authorization from the FCC. Petition at p.4. Whenever possible, the partitioned areas should be defined by geopolitical boundaries, such as county lines. However, like AMTA, CelSMer believes that if partitioning along geopolitical lines is not an option, the parties involved should be allowed to work out another arrangement acceptable to and readily administered by the FCC and apply for a waiver of the FCC's Rules. Allowing an MTA licensee to partition its service area will provide greater flexibility for best serving MTA markets. For example, an MTA licensee who now believes it cannot fully serve the MTA which it won at auction can sell part of the geographic area to another person serving an adjacent market that wants to expand its service or to a qualified entity that was unable to obtain an MTA license in the auction.

2. Disaggregation

CelSMer supports AMTA's proposal that MTA licensees be allowed to disaggregate their 900 MHz spectrum after receiving an authorization from the FCC. Petition at p.5. MTA licensees should be able to assign portions of their spectrum which they do not believe they will be able to use to entities eligible to become 900 MHz SMR licensees under the FCC's Rules. Disaggregation would encourage more efficient use of the available spectrum.

However, unlike AMTA, CelSMer believes that 900 MHz MTA licensees should not be able to disaggregate less than one channel-pair. The FCC should not permit

MTA licensees to disaggregate a mobile frequency without its associated base station. Disaggregation of less than one channel-pair could result in misuse of the frequency or potential interference to other licensees on adjacent spectrum. Disaggregating a mobile frequency from its paired base frequency could lead to improper use of that mobile frequency as a base or other fixed station at a higher than authorized ERP, causing harmful interference to other licensees.¹ Significantly, in the Notice of Proposed Rulemaking, WT Docket No. 96-148, 11 FCC Rcd __ (rel. July 15, 1996) ("PCS NPRM"), the FCC has proposed that PCS licensees "disaggregate frequencies in accordance with the pairings specified in [the] rules". PCS NPRM at ¶ 42. Allowing disaggregation should benefit all parties, and should not be done at the expense of harmful interference to other licensees.

3. Application Process and Licensing

CelSMeR agrees with the application process advanced by AMTA in its Petition. Id. at p.12. This is the same application procedure proposed by the FCC for partitioning and disaggregation of PCS licenses. See PCS NPRM at ¶¶60-61. Each MTA licensee wanting to partition or disaggregate its spectrum would file an FCC Form 490 which would include the signature of the entity wishing to acquire the partitioned area ("Partitionee") or disaggregated spectrum ("Disaggregatee"). The Partitionee or Disaggregatee would need to file an FCC Form 430, Ownership

¹If mobile frequencies are permitted to be used as base station frequencies, even at reduced power, it will be difficult for the FCC with its scarce resources to prove that power levels were improperly increased. Conversely, if the frequency cannot be used as a base station frequency, enforcement will be easier.

Qualification Report, if it did not have a current one on file with the FCC. The Partitionee or Disaggregatee should also file an FCC Form 600 in order to receive an authorization. All three (3) forms would be filed together, which will enable the FCC to more easily process the request and ensure that service is provided quickly.

Once the FCC grants the joint request of the MTA licensee and Partitionee or Disaggregatee, CeISMeR agrees with AMTA's proposal that the Partitionee or Disaggregatee should receive a new call sign for its service area or spectrum and that the expiration date for that license should be the same as that for the original MTA license. Petition at p.11. Similarly, CeISMeR agrees that Partitionees and Disaggregatees should have the same renewal expectancy as MTA licensees. Petition at p. 11. Thus, a Partitionee and Disaggregatee which provided substantial service to its service area would be given a preference as long as it met the other requirements under the FCC's Rules and the Communications Act.

4. Construction Requirements.

CeISMeR agrees with AMTA's proposal that Partitionees and Disaggregatees should be responsible for meeting the construction requirements for the partitioned area or the authorized frequencies acquired. Petition at p.6. Once the FCC grants the Partitionee or Disaggregatee's request and issues an authorization, the MTA licensee will have no rights or responsibilities responsible for providing service to the partitioned area or disaggregated spectrum.

The Partitionees and Disaggregatees should have the same obligation for their acquired area or spectrum as they would have had if the spectrum had been

acquired at the auction. As proposed by AMTA, a Partitionee or Disaggregatee acquiring its license within three years after the initial MTA license grant should have the same option as the MTA licensee to submit a showing that three (3) years from the date the original MTA authorization it is providing substantial service to one-third of the population or to submit a written description of how the Partitionee or Disaggregatee plans to provide substantial service to the area five years after the MTA license grant date. It should be emphasized that Partitionees and Disaggregatees must make this showing three (3) years after the original MTA authorization was issued and not three (3) years after the authorization for the partitioned area or disaggregated spectrum was issued.

For any Partitionee or Disaggregatee acquiring an authorization between three (3) and five (5) years after the original MTA license grant, it would be required to provide substantial service to two-thirds of the population five (5) years after the issuance of the MTA license.²

By requiring each Partitionee and Disaggregatee to meet the same construction requirements, as the original auction winner, the burdens on those new entities will be clear, and each entity will know what is expected of it. Further, such a system will be easier for the FCC to monitor and administer.

²CelSMeR has a pending request to this Commission to vacate the so-called "Erratum" by which the Bureau unlawfully purported to reverse the two-thirds coverage rule promulgated by the full Commission without notice or opportunity for comment.

5. Unjust Enrichment

CelSMeR agrees with AMTA that the FCC's Rules regarding unjust enrichment should also apply to Partitionees and Disaggregates. Petition at p.8. Both Partitionees and Disaggregates will have either a distinct area or amount of spectrum for providing service and each entity should be obligated to pay its pro rata share of the winning bid for that area of service or spectrum separately from the MTA licensee. Most participants and winners in the 900 MHz auction claimed status as small or very small businesses and therefore the unjust enrichment rules will apply to most Partitionees and Disaggregates acquiring service areas or spectrum from those MTA licensees.

CelSMeR favors the first alternative proposed by AMTA in its Petition under which the FCC would extend the same bidding credits and installment payment options to qualifying Partitionees and Disaggregates. Petition at p.9. As with the construction requirements, applying the same unjust enrichment rules to Partitionees and Disaggregates will ease the administrative burden on the FCC and clearly establish the payment obligations of the Partitionee or Disagregatee. As with the MTA licensee, if the Partitionee or Disagregatee fails to make its required payment, the license would revert back to the FCC and not the MTA licensee.

6. Partitioning and Disaggregation

CelSMeR agrees with AMTA that MTA licensees and other qualified entities should be permitted to use both the partitioning and disaggregation rules in combination to expand service offerings. Petition at p.10. For example, an MTA

licensee A could disaggregate part of its spectrum to a qualified entity which was unable to acquire such spectrum in the auction. MTA licensee A could also acquire a portion of the adjacent service area from the MTA licensee B, thereby giving MTA licensee A an expanded service area. By allowing entities to utilize both partitioning and disaggregation, the FCC will increase the service options for licensees.

CONCLUSION

The FCC should allow 900 MHz MTA licensees the option of partitioning their service area and/or disaggregating their spectrum to qualified entities. Allowing for partitioning and disaggregation will give MTA licensees greater flexibility, ensure the efficient use of the spectrum and provide better service to the public.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Yvette King, a secretary at the law firm of Brown Nietert & Kaufman, Chartered, do hereby certify that I have caused a true copy of the foregoing "Comments of CelSMer" to be sent this 21st day of October, 1996 via hand delivery, to the following:

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